IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 7416 of 1999
To
FIRST APPEAL No. 7436 of 1999

with

CROSS OBJECTIONS No. 23 to 43 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURAT URBAN DEVELOPMENT AUTHORITY - Appellant(s)

Versus

GHANSHYAMSINH @ JASHVANTSINH NATVARSINH VANASIA & 2 - Defendant(s)

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Appearance :
MR MD PANDYA for the appellants
MR MAYUR GOHIL for the claimant
GOVERNMENT PLEADER for Respondent No(s).: 3.
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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 04/08/2005

CAV JUDGMENT

(Per : HON'BLE MS.JUSTICE H.N.DEVANI)

1. All these 21 First Appeals preferred by the Acquiring Body as well as 21 Cross Objections filed by the original claimants arise out of a common judgement and award dated 7-5-1999 passed by the Civil Judge (S.D.), Surat, in Land Reference Case No.424/87, 425/87, 427/87 to 430/87, 450/87, 2/88 to 7/88, 9/88 to 11/88, 15/88 to 17/88, 108/88 and 113/88, the main Land Reference Case being No.2/88, and are being disposed of by this common judgement.

2. The appellant, Surat Urban Development Authority (SUDA) had submitted a proposal for acquisition of lands of Village Sachin, Taluka Choryasi, Dist. Surat for the purpose of its Housing Project. Pursuant to the said proposal, a notification dated 19th January, 1984 was published under Section 4 of the Land Acquisition Act, 1894 (the Act) for acquisition of lands situated at Village Sachin, Taluka Choryasi, Dist.Surat for the purpose of Housing Project of SUDA. A declaration under Section 6 of the Act was issued on 25th February 1986 and was published in the Official Gazette on 12th June, 1986. Thereafter, notices were issued under Section 9 of the Act, in response to which, the claimants claimed compensation at the rate of Rs.2,500 per Are. The Land Acquisition Officer, by his common award dated 24th

November 1987 under Section 11 of the Act, offered compensation at the rate of Rs.400/-, Rs.425/-, and Rs.500/- per Are. Being aggrieved by the said award, the claimants moved applications before the Land Acquisition Officer to refer the matters relating to determination of market value of the acquired lands to the concerned Court.

3. Before the Reference Court, the claim was subsequently enhanced to Rs.35/-, Rs.45/- and Rs.60/- per sq. mt. The Reference Court decided the aforesaid Land Reference Cases by a judgement and award dated 7th May 1999, fixing compensation at the rate of Rs.21/-, Rs.22/- and Rs.23/- per sq. mt. instead of Rs.4.00, Rs.4.25 and Rs.5.00 as awarded by the Land Acquisition Officer and also granted other allied reliefs as mentioned in the judgement and award. Both the Acquiring Body SUDA as well as the claimants are aggrieved by the said judgement and award, giving rise to First Appeals No.7416 to 7436 of 1999 by the Acquiring Body and Cross Objections No.23 to 43 of 2003 at the instance of the claimants.

4. Heard Mr.M.D.Pandya, the learned advocate for the appellants and Mr.Mayur Gohil, the learned advocate for the cross objectors.

5. Mr.M.D.Pandya, the learned advocate for the appellants submitted that it was the case of the claimants that the acquired lands were situated

near Surat city on the highway. That, the Sachin – Palsana Road is passing by, and that, the GIDC Cooperative Society, covering about 2000 acres was situated nearby. That, just one kilometre away from the acquired lands, there is a Hazardous Industries Zone. It was contended that, on account of proximity of the land to the Hazardous Industries Zone, the value of the property would decrease. It was submitted that, on the relevant date in 1984, the G.I.D.C. was selling plots at Rs.90/- per sq. mt., which was the basis for claiming enhanced compensation. It was further submitted that the learned Judge had come to the conclusion that it is not just the market rate, but also the potentiality that has to be considered for determination of market value of the acquired lands. It was contended that potentiality becomes relevant for deduction from the market price to determine the expenditure that would be required to be incurred to develop the acquired lands. It was urged that the price of land developed by G.I.D.C. could not have been equated with that of the acquired lands, which were yet to be developed. It was submitted that evidence has to be led to show that what has been awarded by the Land Acquisition Officer is insufficient, however, no such evidence has been led.

6. Referring to paragraph No.3 of the impugned judgement and award

wherein the learned Judge has recorded the submission of the claimants that, “The Land Acquisition Officer only relied upon the sale instances only for agriculture purpose. But, the land has been acquired for the SUDA Housing purpose. The acquired land will going to be utilised for the housing purpose. So, this factor is also required to be considered at the time of fixing the compensation amount”, it was submitted that this finding has to be seen in the light of provisions of Section 23 of the Act, which require the compensation to be determined on the basis of market value of the lands at the date of publication of notification under Section 4 of the Act. It was submitted that the use to which land is to be put is not a factor for enhancement of claim. It was further submitted that sale instances necessarily include the potentiality of the land which is a component of the price and is reflected in the price itself. It was contended that there cannot be any additional loading on the basis of the use to which the acquired land is to be put.

7. The learned advocate referred to Issue No.1 framed by the learned Judge, namely, “Whether the claimants prove that the compensation awarded is not proper and adequate?”, and submitted that the evidence led before the Reference Court was not sufficient to record a finding

on the said issue. The learned advocate referred to paragraph No.22 of the impugned judgement and award and submitted that the learned Judge had held that the purpose for which the land has been acquired has to be considered at the time of fixing compensation. The learned advocate referred to the decision of the Supreme Court in case of Viluben Jhalejar Contractor v. State of Gujarat, 2005 [4] Supreme 329, and submitted that the purpose for which the land has been acquired is relevant for the purpose of deduction in the market rate towards development purposes. It was submitted that, after determining the market price, deduction should have been made keeping in view the future developments which were required to be made. It was submitted that the market price as determined by the Land Acquisition Officer was just and reasonable, and that the Reference Court had erred in enhancing the same.

8. Mr.Mayur Gohil, the learned advocate for the cross objectors submitted that even if the contention of Mr.Pandya as regards the deduction towards development purposes is accepted and deduction is made from the market value of Rs.90/- per sq. mt. of the lands sold by the G.I.D.C., the value of the acquired lands would still be more than the awarded amount. That, therefore, the compensation is required to

be enhanced. The learned advocate placed reliance upon a judgement and order dated 17-10-2000 passed by this Court in First Appeals No.90 to 104 of 2000 with First Appeals No.2103 to 2117 of 2000, and submitted that the lands under acquisition in the said First Appeals, were agricultural lands of Village Lajpore, Taluka Choryasi, Dist. Surat, which were acquired for the public purpose of Housing Scheme of Gujarat Housing Board, and were situated near the acquired lands, and hence, the compensation in respect of the acquired lands was required to be enhanced in terms of the said award. Mr.Gohil produced a map to point out the proximity between the lands acquired under the said award to the lands in the present case. In conclusion, he submitted that, as recorded in paragraph No.14 of the impugned judgement and award, the learned advocate appearing for SUDA as well as the Government Pleader had submitted that even on the basis of the award exh.41 in Land Reference Case No.89 of 1990, the claimants cannot demand more than Rs.20/- per sq. mt. and submitted that, accordingly, the compensation cannot be determined at less than Rs.20/- per mt.

9. As can be seen from the evidence on record, the claimants in these cases had examined Ghanshyamsinh Natvarsinh at exhibit 15, who is

the claimant in Reference Case No.2/1988, and is the sole witness who has been examined. No witness has been examined on behalf of the appellant – Acquiring Body or the State Government. On behalf of the claimants, certain documents in the form of Village Form No.7/12, as well as the documents evidencing the price of lands allotted by GIDC etc., as well as the previous judgments and awards in other Land Reference Cases have been produced.

10. Witness Ghanshyamsinh Natvarsinh has deposed that the acquired lands are adjoining Sachin – Vanz Road. That, GIDC had acquired lands situated in Village Sachin which are similar to the lands acquired in these cases. That, the lands acquired by the Housing Board are also similar to the acquired lands. It was stated that the same type of crops were being cultivated, and that, the profits were also the same. That, the acquired lands are situated at a distance of 4 Kms from the limits of Surat city and are adjoining the Surat – Navsari Road. That, the Sachin – Palsana road is on the other side of the acquired lands. It was further deposed that the Sachin Industrial Estate is situated on land, next to the acquired lands. That, the acquired lands are situated at a distance of one and half kilometres from Sachin GIDC, and at a distance of half a kilometre from the Railway Station. It was also

stated that the acquired lands are adjoining the gamtal.

11. Upon perusal of the impugned judgement and award, it is apparent that the claimants have mainly relied upon the sale instances made by the GIDC as well as the previous awards made by the Reference Courts which are produced at exhs. 41 and 55. The claimants have also relied upon the fact that, SUDA had acquired land for housing purposes and was selling plots at Rs.140/- per sq. mt. in the year 1991, to contend that the purpose for which the lands had been acquired and the potentiality has not been considered.

12. Upon perusal of the record, it is seen that exh.41 is an award passed in Land Reference Case No.89/1990 in respect of the lands acquired for the purpose of construction of Industrial Housing Colony and Housing Society for the purpose of Gujarat Industrial Development Corporation (GIDC), wherein compensation had been determined at the rate of Rs.20/- per sq. mt. whereas, exh.55 is an award passed in Land Reference Cases No.143/1986 and 144/1986 in respect of the lands situated at Village Kansad, Taluka Choryasi, acquired for the purpose of Slum Clearance Board, wherein the compensation has been determined at the rate of Rs.32/- per sq. mt.

13. The Reference Court, on the basis of the evidence on record, found

that the acquired lands are adjoining the State Highway. That, Kansad property is situated on the western side and Sachin GIDC on the eastern side and was of the opinion that it could not grant compensation at a rate less than Rs.20/- per sq. mt., as had been awarded for Sachin GIDC. The Reference Court observed that the Land Acquisition Officer had not considered the purpose for which the lands had been acquired, and that, the potentiality of the lands had not been taken into consideration. The Reference Court found that, in terms of potentiality and fertility, the lands acquired in the present case and the lands which were subject matter of acquisition in Land Reference Case No.89/1990 were similar. The Reference Court observed that the notification under Section 4 of the Act in Land Reference Case No.89/1990 was issued on 1-7-1982, wherein compensation was determined at the rate of Rs.20 per sq. mt., whereas in the present case, the notification under Section 4 of the Act was issued on 19-1-1984, hence, considering the difference in the period between the issuance of the said notification, a 10% increase was required to be granted to the claimants. Accordingly, the Reference Court determined the compensation at the rate of Rs.21/-, Rs.22 and Rs.23/- per sq. mt. instead of Rs.4.00, Rs.4.25 and Rs.5.00 per sq. mt.,

as awarded by the Land Acquisition Officer.

14.From the facts stated above, it is apparent that the Reference Court has based its decision on the judgement and award dated 31st January, 1998 passed by the Assistant Judge, Surat in Land Reference Case No.89/1990, and not on the sale instances of GIDC. Hence, the contention on behalf of the appellant, regarding deduction of development charges after deciding the market rate does not merit acceptance.

15.As can be seen from the evidence on record, the claimants have examined Ghanshyamsinh Natvarsinh, who has deposed that the lands acquired for the purpose of Sachin Housing Society for GIDC are similar in terms of crops grown as well as yield. The said evidence has not been rebutted by the Acquiring Body or the State Government by producing any evidence to the contrary. Hence, no fault can be found with the Reference Court in accepting the said evidence. It is settled legal position that a previous judgement of a Court or an award can be made the basis for assessment of the market value of the acquired land, provided the party relying on such judgement adduces evidence to show that it can form the basis for fixing the market value of the acquired land. In the circumstances, the Reference court has

rightly relied upon the previous judgement in respect of lands of the same village, relying upon the evidence led on behalf of claimants to show that the lands acquired in the present case are comparable to the lands acquired in case of the judgement relied upon. It is settled legal position that in respect of comparable lands wherein notification under Section 4 of the Act is issued subsequently, a 5 to 10% increase in market value is required to be given keeping in view escalation of prices. Accordingly, the Reference Court has rightly determined the compensation at a slightly higher rate of Rs.21/-, Rs.22/- and Rs.23/- per sq. mt., instead of Rs.20/- per sq. mt., keeping in view the fact that, in case of the previous judgement, the notification under Section 4 was published on 1-7-1982, whereas in the present case, it was published on 19-1-1984.

16. As regards the reliance placed by the learned advocate for the claimants upon the judgement of this Court in First Appeals No.90 to 104 of 2000 with First Appeals No.2103 to 2117 of 2000, wherein compensation had been determined at the rate of Rs.35/- per sq. mt. in respect of lands situated at Village Lajpore, Taluka Choryasi, Dist. Surat, the same can safely be disregarded in view of the law laid down by the Supreme Court in case of Pal Singh v. Union Territory of

Chandigarh, (1992) 4 SCC 400, wherein it has been observed thus:

> "*No doubt, a judgment of a court in a land acquisition case determining the market value of a land in the vicinity of the acquired lands, even though not inter parties, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred as has been held by the Calcutta High Court in H.K.Mallick case based on the authority of the Judicial Committee of the Privy Council in Secretary of State for India in Council v. Indian General Steam Navigation and Railway co. Ltd., where the Judicial committee did refuse to interfere with the High Court judgement in a land acquisition case based on previous awards, holding that no question of principle was involved in it. But what cannot be overlooked is, that for a judgement relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, it must have been a previous judgement of court and as an instance, it must have been proved by the person relying upon such judgement by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land. In the case on hand, the petitioners who are claimants claiming enhanced compensation for their acquired land have not produced the judgement of the High Court on which they propose to rely for finding the market value of their acquired lands as evidence in their cases, in that they could not have done so for the reason that it was not a judgement then available to them as a previous judgement relating to market*

value of land in the vicinity."

18. Applying the principles laid down in the aforesaid decision to the facts of the present case, it is apparent that the judgement of this Court cannot be made the basis for determining the market value of the acquired lands. Firstly, because it is rendered on 17-10-2000, hence, it was not available to the claimants to be produced as evidence in their cases as a previous judgement relating to market value of the lands in the vicinity. Secondly, no evidence has been led on behalf of the claimants to show that the lands acquired in the case of the judgement relied upon, are in any manner comparable to the lands acquired in the present case.

19. In the result, both the Appeals as well as Cross Objections fail, and the same are hereby dismissed. There shall be no orders as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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